

Gilhooly



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ARO Corporation

File: B-231438

Date: July 22, 1988

DIGEST

1. General Accounting Office will not object to agency's decision to set aside procurement for small business concerns where the record indicates the contracting officer had a reasonable expectation that offers would be obtained from at least two small business concerns and that an award would be made at a reasonable price.

2. Where a small business set-aside is found to be proper, a large business protester is not an interested party for the purpose of protesting the agency's decision to conduct negotiations rather than solicit bids.

DECISION

The ARO Corporation, a large business, protests the Department of the Air Force's designation of request for proposals (RFP) No. F41608-88-R-2062 as a total small business set-aside. The RFP was issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas, for lubrication and servicing units. We deny the protest in part and dismiss it in part.

ARO contends that the procurement should not have been set aside for small business concerns because there has been only one offer from a small business concern to furnish the units since 1979, and that offer was 110 percent higher than ARO's price. ARO notes that, with one exception, there has never been more than one small business bidder on any past Kelly Air Force Base acquisition of these units, going back to 1965. According to ARO, small business concerns have never been able to bid competitively because no domestic small business concerns manufacture the pumps and control valve assemblies, which account for roughly 50 percent of the component costs. Since small business concerns must purchase these components, ARO asserts that their total costs must always be substantially higher than the costs of a manufacturer of these components such as ARO.

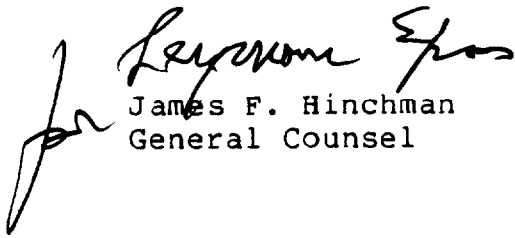
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Federal Acquisition Regulation § 19.502-2 (FAC 84-31) directs that an acquisition be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that offers will be obtained from at least two responsible small businesses and award will be made at a reasonable price. Because the decision to set aside a procurement is basically a business judgment within the broad discretion of the contracting agency, we will not question a set-aside decision unless an abuse of discretion is clearly shown. Litton Electron Devices, 66 Comp. Gen. 257 (1987), 87-1 CPD ¶ 164. Under this standard, we have held that procurements properly have been reserved for small business concerns where the set-aside determinations were based on such factors as: prior procurement history, Anchor Continental, Inc., 65 Comp. Gen. 270 (1986), 86-1 CPD ¶ 137; market surveys, Consolidated Micro-graphics, Inc., B-222229, Apr. 29, 1986, 86-1 CPD ¶ 415; or advice from the agency's small business specialists and technical personnel, Mantech International Corp., B-216505, Feb. 11, 1985, 85-1 CPD ¶ 176.

Our review of the record does not indicate that the contracting officer abused his discretion in deciding to set aside this procurement. The Small and Disadvantaged Business Utilization Office furnished the contracting officer a list, obtained from the Small Business Administration Special Procurement History Extract, of five small business contractors who had contracted with the government for similar lubricating equipment. The contracting officer determined that reasonable, competitive prices would be received on a set-aside with that magnitude of possible small business participation. Though ARO argues that prices offered by small businesses will be higher than ARO's prices, ARO has not shown that the contracting officer's judgment to set this procurement aside was unreasonable. To implement the purposes of the Small Business Act, a contracting agency may make award on a set-aside at a premium price. APAC-Tennessee, Inc., B-226365, B-227049, Apr. 27, 1987, 87-1 CPD ¶ 438.

ARO also asserts that this procurement should be conducted using sealed bids rather than negotiation procedures. Since we find no merit to ARO's protest of the Air Force's decision to set aside this procurement for small businesses, and ARO as a large business is ineligible for award under the solicitation, ARO is not an interested party for the purpose of protesting the procurement procedures the Air Force has selected. See Hayes International Corp., B-224119, Jan. 2, 1987, 87-1 CPD ¶ 2.

The protest is denied in part and dismissed in part and, therefore, ARO's claim for the costs of filing and pursuing the protest is also denied.



James F. Hinchman
General Counsel